

CCRB INVESTIGATIVE RECOMMENDATION

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|--|--|---------------------------|--|---|--|
| Investigator: Kim Mosolf | Team: Team # 5 | CCRB Case #: 200205713 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Thursday, 08/22/2002 3:50 AM | Location of Incident: Flatbush Avenue & Alton Place | Precinct: 63 | 18 Mo. SOL 2/22/2004 | EO SOL 2/22/2004 | |
| Date/Time CV Reported Thu, 08/22/2002 4:08 AM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Tue, 08/27/2002 10:06 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |
| | |
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. POM Robert Martinez | 20291 | 922716 | 063 PCT |
| 2. POM James Murphy | 14857 | 926095 | 063 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|----------------------|-----------|--------|----------|
| 1. SGT William Brady | 00035 | 885282 | 063 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A.POM Robert Martinez | Discourtesy: PO Robert Martinez spoke obscenely and rudely to § 87(2)(b) | |
| B.POM Robert Martinez | Force: PO Robert Martinez used physical force against § 87(2)(b) | |
| C.POM Robert Martinez | Discourtesy: PO Robert Martinez acted rudely toward § 87(2)(b) | |
| D.POM James Murphy | Force: PO James Murphy hit § 87(2)(b) against a vehicle. | |
| E.POM Robert Martinez | Force: PO Robert Martinez hit § 87(2)(b) against a vehicle. | |
| F.POM Robert Martinez | Abuse: PO Robert Martinez threatened to arrest § 87(2)(b) | |
| G.POM Robert Martinez | Discourtesy: PO Robert Martinez spoke obscenely and rudely to § 87(2)(b) | |
| H.POM James Murphy | Force: PO James Murphy used pepper spray against § 87(2)(b) | |

Synopsis

On August 22, 2002, § 87(2)(b), § 87(2)(b), § 87(2)(b), and § 87(2)(b) were passengers in a car driven by § 87(2)(b). At approximately 3:30 AM, they were pulled over at the intersection of Flatbush Avenue and Alton Place in Brooklyn by PO Robert Martinez and PO James Murphy of the 63rd Precinct because of a broken headlight. The car stop allegedly resulted in a verbal altercation between § 87(2)(b) and PO Martinez in which he cursed at § 87(2)(b) and allegedly dragged her from her vehicle (Allegations A and B). She was then allegedly hit against the back of the vehicle by both officers, and pepper sprayed by PO Murphy (Allegations D, E, and H respectively). Food she was carrying was allegedly thrown to the ground (Allegation C). PO Martinez also allegedly cursed at § 87(2)(b) and threatened to arrest her (Allegations F and G).

§ 87(2)(g)

Summary of Complaint

Complainant/Victim: § 87(2)(b)

§ 87(2)(b) was taken to § 87(2)(b) from the station house on the date of incident and was treated in the emergency room. The “History and Physical Examination” in her medical records notes that the “patient reportedly became agitated after a vehicle she was a passenger in was pulled over by NYPD. Patient claimed that she just wanted to go home to her kids but an argument ensued. Patient apparently was sprayed with mace and claims to have banged her head on the (illegible) car.” The records also note that § 87(2)(b) “complained of pain to the left side of face after being punched.” (Enc. 6a-c)

§ 87(2)(b) was then interviewed by IAB at the hospital (Enc. 7a-b). § 87(2)(b), § 87(2)(g) She specifically noted that the original argument was in regards to PO Martinez pointing the flashlight in her eyes and that he used profanity in response to her complaints. She also stated that she was pulled from the car by her hair and slammed down on the trunk of the car. She admitted to refusing to be handcuffed and reported that she was pepper-sprayed. She made no mention of any food she was carrying.

§ 87(2)(b) was interviewed by the undersigned investigator at § 87(2)(b) in Brooklyn on October 15, 2002 (Enc. 8a-d). She stated that, on August 22, 2002 at approximately 3:50 AM, she was a passenger in the backseat of a friend, § 87(2)(b)'s, vehicle, driving home from another friend, § 87(2)(b)'s, house on § 87(2)(b). The driver was § 87(2)(b), § 87(2)(b)'s boyfriend. The front passenger was occupied by § 87(2)(b) directly behind her was § 87(2)(b) in the middle was § 87(2)(b) and directly behind the driver was § 87(2)(b). They had stopped at McDonald's and had food with them in the car. They were on their way to drop § 87(2)(b) off when they were pulled over by a marked police car in the vicinity of Flatbush Avenue and Avenue M in Brooklyn. The car was a black Acura Legend, four doors, with tinted windows.

The officers approached the vehicle, one on each side. An officer later identified as PO Martinez was standing on the passenger side and was shining his flashlight all around inside the car. The light was bothering § 87(2)(b)'s eyes and, through an open window, she said, “Sir, can you please put the flashlight down because I don’t have my glasses and the light is bothering me.” PO Martinez responded, “Do I owe you that?” § 87(2)(b) was laughing and said, “Oh my

God, I don't think I'm going to get arrested because I'm bringing food home for my kids." When asked if the officers ever indicated why they had pulled them over, § 87(2)(b) could not recall them ever explaining. The officer was "being rude and yelling," but § 87(2)(b) could recall no specifics of what was said or discussed. She stated, "I just kept on laughing." When asked if they were arguing, § 87(2)(b) stated that he was yelling at her and she replied, "I'm not your child."

Meanwhile, an officer later identified as PO Murphy was on the driver's side obtaining § 87(2)(b)'s license and registration. PO Murphy returned to the police vehicle, which was parked behind § 87(2)(b)'s car, to check the license and registration. PO Martinez remained and was still looking for something in the car with his flashlight. § 87(2)(b) told him to stop and the other girls told PO Martinez that § 87(2)(b) had the right to tell him to stop.

After PO Martinez finished shining the flashlight around, he also returned to the RMP. § 87(2)(b) began joking around with her friends. § 87(2)(b) then attempted to get out of the car to go and speak with the officers. § 87(2)(b) stopped her, stating, "You're not supposed to get out of the car when the cops stop you because you could get killed." § 87(2)(b) got the door open and § 87(2)(b) gestured her middle finger towards § 87(2)(b) angry that she was still trying to get out of the car.

PO Martinez exited his RMP and returned to § 87(2)(b)'s car. § 87(2)(b) believed that PO Martinez thought she had been gesturing her middle finger at him because he was upset, but he did not indicate this to her. He asked her for her identification and she supplied work identification. He then asked if she had a driver's license and she stated that she was not driving and did not have a license. PO Martinez stated he did not want the work identification and § 87(2)(b) replied, "What do you want me to do? At least I gave you something with my picture." PO Martinez told her to get out of the car. He grabbed her by her hair to get § 87(2)(b) out of the car. She was carrying a bag of McDonald's food in one hand and a soda in the other, which she explained to the officer was food for her children at home. PO Martinez knocked it out of her hand and it landed on the ground. He said, "Well, now you're not going to bring that to your kids."

PO Martinez had § 87(2)(b) turned towards the car, up against the back of the vehicle. She stated to the officer that he had not informed her that she was under arrest and PO Martinez replied, "I don't have to tell you shit." He was trying to handcuff § 87(2)(b) and § 87(2)(b) turned around to talk to him. PO Martinez then grabbed her hair and pushed her head down onto the car, so that the front of her forehead made contact with the car. He did this twice and then called his partner from the RMP to come over and pepper-spray § 87(2)(b). PO Murphy also had his arm around § 87(2)(b)'s neck. PO Martinez was then able to get the other handcuff on her. § 87(2)(b) had not been struggling with PO Martinez at all. § 87(2)(b) stated that her friends could not see this happening from where they sat in the car because the windows are tinted. She began screaming after the officers pepper-sprayed her and her friends were asking what was going on. The officers told them to remain in the vehicle and to come to the station house to wait for her.

§ 87(2)(b) could not open her eyes, even after they had been flushed with water at the station house. An ambulance was called for her and she was walked to the ambulance with her eyes closed.

§ 87(2)(b) stated that she and her friends had not been drinking or using drugs that evening. § 87(2)(b) did not know what charges she was facing, although she had been at court the

morning of this interview. § 87(2)(a) 160.50

Results of Investigation

Witnesses

The car that PO Murphy and PO Martinez pulled over on August 22, 2002 had five people in it, including § 87(2)(b) the victim, and § 87(2)(b) the complainant. § 87(2)(b) another passenger, was contacted and interviewed over the phone. § 87(2)(b) the front seat passenger, was interviewed briefly on the date of incident by IAB, but did not return efforts at contact by the undersigned investigator. § 87(2)(b) the driver, could not be located by IAB or by this investigation.

Witness: § 87(2)(b)

§ 87(2)(b) called 911 to report this incident from the 63rd Precinct station house after following § 87(2)(b) there directly after her arrest (Enc. 4a-b). She initially reported that § 87(2)(b) had been subject to excessive force during her arrest after getting into an argument over an officer's use of a flashlight during a car stop. § 87(2)(g) she stated that § 87(2)(b) exited the vehicle on her own, although she claimed that the officer grabbed her by her hair and slammed her onto the car trunk.

§ 87(2)(b) was interviewed by the undersigned investigator at § 87(2)(b) in Brooklyn on October 15, 2002 (Enc. 10a-d). § 87(2)(b) stated that she was driving with friends, coming from a friend, § 87(2)(b)'s, house. They had not been drinking or using drugs. They stopped at a McDonald's at approximately 3:50 AM to get food and were then pulled over by the police in the vicinity of Alton Place and Flatbush Avenue in Brooklyn. § 87(2)(b) stated that, while in line at the McDonald's drive-through, they had to wait behind one car for a long time, so they argued with the McDonald's worker at the window, asking to speak with her manager. § 87(2)(b) thought that this worker had possibly called the police on them.

The police parked their RMP behind the civilians' vehicle. The driver officer approached the driver's side and asked § 87(2)(b) the driver and § 87(2)(b)'s boyfriend, for his license and registration. This officer was calm and told § 87(2)(b) that they had been pulled over for some reason related to the tail light, although § 87(2)(b) was not sure.

§ 87(2)(b) was sitting in the back seat, in the middle, with § 87(2)(b) on her right, behind the front passenger seat, and § 87(2)(b) on her left. § 87(2)(b) was in the front passenger seat.

An officer, later identified as PO Martinez, was standing on the passenger side of their vehicle, shining a flashlight in the car. It was bothering § 87(2)(b)'s eyes, so she told him not to flash the light in her eyes. He responded that he could "fucking do that." § 87(2)(b) and the other women told him that he could not do that and § 87(2)(b) and PO Martinez went back and forth over the issue. § 87(2)(b) continuously insisted that he could not do that; that it was against the law. The officer insisted that he could. He stated to § 87(2)(b) "If you don't fucking shut up, I'm going to take you downtown. Shut the fuck up." § 87(2)(b) was not cursing at the officer, but did raise her voice as they argued.

Meanwhile, the officer on the driver's side, later identified as PO Murphy, had obtained § 87(2)(b)'s driver's license and paperwork, and had returned to the RMP to check them. PO Martinez also returned to the RMP. Approximately twenty minutes had passed.

The officers were at the RMP for approximately ten minutes. § 87(2)(b) attempted to get out of the car, but § 87(2)(b) could not recall why. § 87(2)(b) opened the door, but did not get out, and § 87(2)(b) gestured her middle finger at her and told her not to exit the car. § 87(2)(b) did not extend her middle finger out of the window. § 87(2)(b) believed that PO Martinez thought that § 87(2)(b) had gestured towards him. He approached their vehicle again and said something relating to § 87(2)(b)'s gesture. He told her to open the door and get out. She complied and the officer did not have to help her out or pull her out.

The officers asked § 87(2)(b) for identification, but did not accept the identification that she provided. She had food with her and PO Martinez "dropped" the food on the ground and stepped on it. § 87(2)(b) stated that the back passenger window was open and she could hear what was going on quite well. She heard that PO Martinez and § 87(2)(b) were exchanging words, although she was not sure what was being said. § 87(2)(b) stated, "She was trying to get them off her. She was trying to defend herself. She was trying to get away, but she couldn't because they were holding her down." When § 87(2)(b) turned around, she saw that PO Martinez was trying to handcuff § 87(2)(b) and then PO Murphy came around to the passenger side and put his arm around § 87(2)(b)'s neck. § 87(2)(b) was pepper-sprayed by PO Martinez and then PO Martinez pulled her hair and slammed her head down again on the vehicle's trunk. § 87(2)(b) stated that she could see § 87(2)(b)'s face, and so reasoned that the right side of § 87(2)(b)'s face was on the vehicle. This happened approximately three times. § 87(2)(b) was struggling against the officers, but did calm down after she was pepper-sprayed. § 87(2)(b) did not see how the struggle began.

Another marked vehicle had arrived on the scene, parking next to the first RMP, sometime before § 87(2)(b) was asked to exit the vehicle, but § 87(2)(b) could not recall if they stayed on the scene. She did not believe that they were on the scene during the struggle, but was unsure. She stated that these officers exited their vehicle, but were not involved in the incident at all.

§ 87(2)(b) was taken in the back of the RMP to the station house. § 87(2)(b) and the other civilians followed. At the station house, § 87(2)(b) could hear § 87(2)(b) moaning about how she wanted her glasses. § 87(2)(b) had her glasses and provided them to the officers to give to § 87(2)(b). An ambulance arrived for § 87(2)(b) and she was placed in some type of restraints and walked to the ambulance. An officer told her to jump in, and she fell as she attempted to get in.

Witness/Victim: § 87(2)(b)

§ 87(2)(b) was initially interviewed by IAB on the date of incident (Enc. 11a-b). § 87(2)(g) she told IAB that § 87(2)(b) exited the vehicle on her own, but in her later CCRB phone statement, indicated that the officer pulled her from the vehicle.

§ 87(2)(b) was interviewed over the phone on January 31, 2003 (Enc. 12a-b). She stated that, on August 22, 2002, at approximately 3:30 AM, she was the passenger in the car of § 87(2)(b) seated directly behind the driver. § 87(2)(b) sat in the middle back seat, § 87(2)(b) sat in the back passenger seat, and § 87(2)(b) sat in the front passenger seat. The friends had just come from McDonald's when they were pulled over in the vicinity of Flatbush Avenue and Alton Place by two officers in a marked car.

An officer later identified as PO Murphy approached the driver's side window and spoke with § 87(2)(b) obtaining his license and registration. Another officer, later identified as PO Martinez, was at the passenger side, shining a flashlight through the window and into the back passengers' faces. § 87(2)(b) asked PO Martinez to put the light down, as it bothered her eyes. PO Martinez refused and made some sort of "smart remark." When § 87(2)(b) asked him again, he responded, "I don't have to fucking put it down."

The officers returned to their vehicle with § 87(2)(b)'s license and registration. § 87(2)(b) the front passenger, then attempted to get out of the car, as she wanted to ask the officers why they had pulled them over in the first place. She only got her leg out of the car before she was stopped by her friends.

The officers used their microphone from the police car to tell § 87(2)(b) to get back into the car. PO Martinez then approached then approached the passenger side of the vehicle, opened the back passenger door, and pulled § 87(2)(b) out of the car without asking or ordering her to exit. He grabbed her arm. When she was out of the vehicle, PO Martinez asked for her identification and § 87(2)(b) gave him her work identification. He told her he wanted her driver's license, but § 87(2)(b) told him that she had no driver's license. He insisted again that this was what he wanted and § 87(2)(b) responded, "How stupid is that? What if I don't have a driver's license?"

PO Martinez said, "You better give me your fucking ID." He grew angry at this point and grabbed § 87(2)(b) by the arms, slamming her onto the trunk of the car by holding her dreads. The bag of McDonald's food that § 87(2)(b) was carrying fell onto the ground and her purse fell onto the trunk of the car. § 87(2)(b) was trying to lift her neck up off of the car, but was unable to. PO Murphy was now also involved in holding her down. PO Martinez had not said anything to § 87(2)(b) or tried to handcuff her before slamming her onto the car. § 87(2)(b) was not moving her arms or moving around at all before PO Martinez went to slam her into the car. Once she had been slammed down onto the car, she tried to move and PO Martinez pushed her down again.

PO Murphy told them all to stay in the car. The officers were struggling with § 87(2)(b) for approximately a minute before PO Murphy handcuffed her. § 87(2)(b) did not see § 87(2)(b) get pepper-sprayed.

After § 87(2)(b) was put into the back of the marked car, PO Martinez returned to the civilian's car and, in response to the civilians' remarks and protests, stated, "All y'all better shut the fuck up, I've got handcuffs for all you guys." He then dropped the purse from the top of the trunk onto the ground and kicked both the purse and the food. PO Murphy then returned the purse to § 87(2)(b). After he had done this and returned to his vehicle, another police car arrived on the scene, but they had no contact with these officers.

Subject Officer: PO James Murphy

PO James Murphy was interviewed on December 12, 2002 (Enc. 13a-d). On August 22, 2002, PO Murphy worked an 11:15 PM to 7:50 AM shift assigned to Sector B and F with PO Martinez. He was in uniform and assigned to RMP 1732.

PO Murphy stated that he and his partner pulled over the vehicle driven by § 87(2)(b) at 3:58 AM due to a broken taillight. They parked their vehicle behind § 87(2)(b)'s vehicle approximately 8 to 12 feet away, and PO Murphy approached the driver's side, where he spoke to

§ 87(2)(b) through an open window. He asked § 87(2)(b) for his license, registration, and insurance, which he obtained without difficulty. PO Murphy stated that there were several individuals in the vehicle, but that the woman seated in the rear passenger seat, § 87(2)(b) was cursing and screaming at the officers. The other passengers in the car were asking her to be quiet. She appeared intoxicated to PO Murphy, due to her behavior and the smell of alcohol in the vehicle. § 87(2)(b) did not appear intoxicated.

PO Martinez was on the passenger side of the vehicle. PO Murphy did not believe that PO Martinez had any conversation with the passengers. He stated that PO Martinez was using a flashlight, but did not believe he was shining it into the back seat excessively. He did not witness any argument between § 87(2)(b) and PO Martinez regarding the flashlight. He stated that he was involved with the driver and did not really hear what was happening on the passenger side with PO Martinez. This initial conversation lasted approximately one minute.

PO Murphy and his partner returned to the RMP to run a check on § 87(2)(b) and write a summons § 87(2)(b). While they ran the check, § 87(2)(b) was giving them the finger and screaming out the window at them from her seat, saying “fuck you” and calling them names. He could not recall anything else specific that § 87(2)(b) said.

§ 87(2)(b) then exited her vehicle. The officers both repeatedly asked her to get back into her vehicle. They exited the RMP and approached § 87(2)(b). PO Murphy told § 87(2)(b) that she would be arrested if she did not return to her vehicle. PO Murphy stated that he was doing most of the talking to § 87(2)(b). She was cursing and threw her purse at PO Martinez, striking him in the chest. PO Murphy did not know why she threw the bag at PO Martinez and not himself. She was also carrying food, although PO Murphy could recall if it was in a bag or what specifically she was carrying. She began swinging at PO Martinez and he grabbed her, pushing her front side down onto the back passenger side of the vehicle.

§ 87(2)(b) pushed off of the car and was pushed back down onto the car once by PO Martinez. She was struggling quite a bit with her arms. PO Murphy could not recall if § 87(2)(b)'s head hit the back of the vehicle. He did recall either he or his partner grabbing her hair to control her. PO Murphy stated that he and his partner did not curse at § 87(2)(b) and only asked her to stop struggling and give them her arms. After PO Martinez had pushed § 87(2)(b) back onto the vehicle, PO Murphy pepper-sprayed her and she calmed down. She was still fighting the officers with her arms, but was no longer flailing them. PO Murphy never put his arms around her neck or upper chest area and neither did his partner. She was then handcuffed. This struggle lasted approximately thirty to forty seconds.

PO Murphy stated that the food § 87(2)(b) had been carrying was on the ground at the end of this incident. He stated that he had no idea how it got there. He did not recall if his partner had taken it out of her hands and thrown it on the ground. He did not recall throwing the food on the ground. He had no recollection of hearing any conversation regarding the food being for § 87(2)(b)'s children.

Officers who had been driving down Flatbush Avenue stopped to see if they needed any help—PO Murphy and his partner had not radioed for back-up. It was a sergeant who verified the arrest and the sergeant's operator, although PO Murphy could not recall who this was specifically. He stated that both were White male officers in a marked car from his command. He also stated that they arrived on the scene after § 87(2)(b) had been handcuffed and placed in the back of his vehicle.

PO Murphy had not completed the summons for § 87(2)(b) so he asked that they follow him to the station house, where he finished writing and issuing it. PO Murphy recalled that § 87(2)(b) was complaining about her eyes at the station house, due to the pepper spray, but recalled nothing about her wanting her glasses.

Subject Officer: PO Robert Martinez

PO Robert Martinez was interviewed on January 23, 2003 at the CCRB (Enc. 14a-f). On August 22, 2002, PO Martinez worked an 11:15 PM to 7:50 AM shift with PO Murphy, assigned to Sectors B/F in RMP 1732, dressed in uniform.

At 3:58 AM, the officers pulled over a vehicle at Flatbush and Alton Place in Brooklyn because one of the headlights was out—their intention was to issue a summons for the broken headlight and they noticed nothing else out of the ordinary, such as the smell of alcohol. PO Murphy approached the driver's side and spoke with the male driver through an open window. PO Martinez approached the passenger side, using his flashlight to look into the vehicle and assure the safety of all involved. A female in the backseat, later identified as § 87(2)(b) was "irate and cursing." She seemed upset about the flashlight, believing that PO Martinez was putting it in her face. She yelled quite a bit at PO Martinez, but he said nothing to her. He could not recall what § 87(2)(b) was saying specifically. PO Martinez could not recall anyone else in the car becoming involved.

The officers returned together to their car to run a license check on the driver, which came up clean. As they exited their vehicle to return to the civilian's car, § 87(2)(b) exited her car, appearing upset. She had been yelling, cursing ("the F word") and sticking her middle finger up while the officers had been running the license check. PO Martinez both heard and saw her behave in this manner.

PO Martinez told § 87(2)(b) that she needed to calm down because she was creating a scene and people were stopping to watch. No one else in the car attempted to exit the vehicle. § 87(2)(b) was holding a bag of McDonald's in her hand, but gave no explanation or had no conversation about this. PO Martinez stated that she somehow dropped or threw this bag. He recalled that she had it in her hand when she exited the car and was moving her hands around quite a bit. He assumed that she threw the bag at him, but was unsure. The food hit his legs on the way to the ground—he was standing approximately two or three feet from her. PO Martinez did not recall her having anything else, such as a purse, in her hands.

PO Martinez was still telling § 87(2)(b) to calm down, raising his voice to be heard over her. He stated that he saw her identification at some point, but did not recall when or what type of identification. He had no recollection of having a problem with the type of identification she supplied.

PO Martinez warned § 87(2)(b) that she would be arrested for disorderly conduct because she would not calm down. When asked if it was clear to him why § 87(2)(b) was "so irate," PO Martinez stated that it started when he initially approached the car and § 87(2)(b) was upset about the flashlight, but he could think of nothing else. She made no mention of thinking that the car stop was unfair. When she got out of the car, she was not yelling about the flashlight and did not yell about her food, but PO Martinez could not recall what she was yelling about.

PO Martinez went to grab § 87(2)(b) by each arm to turn her around and place handcuffs on her. She tore away from him and began swinging her arms. PO Martinez grabbed her arms again, as did PO Murphy. She was pushing away from them and continuously swinging her

arms, but PO Martinez noted that it was odd, because she is a female and he did not want to grab her too hard, but she was fighting. The officers got § 87(2)(b) against the trunk of the civilian's car, face down, and were still trying to get handcuffs on her. At one point, she kicked back and kicked PO Martinez.

When asked if § 87(2)(b) was trying to get up off the back of the car, or if the officers had to keep her down in any way, PO Martinez stated no. He stated that he and his partner never used his arms with pressure to keep her down on the car. He did not recall ever seeing § 87(2)(b) get pushed back down onto the car, but then stated that she only remained there calmly without a problem after being pepper-sprayed. PO Martinez explained that it happened quite fast. He then stated that before being pepper-sprayed, § 87(2)(b) was not staying calmly on the car, but was pushing up.

When asked how they then kept her down on the car, PO Martinez stated that the officers just held her away from them, not DOWN on the car. When asked again if § 87(2)(b) ever came up off of the car and had to be placed back down toward the car, he stated, "I don't recall." He never saw § 87(2)(b) hit her head or any part of her upper body against the car. PO Martinez never held § 87(2)(b) by her dreads and never saw his partner do so.

PO Murphy pepper-sprayed § 87(2)(b) in response to her trying to hit and kick the officers. She became totally calm. PO Martinez could not recall if anyone else in the civilian's car said anything, but stated that they did not exit their vehicle.

The patrol sergeant arrived after § 87(2)(b) had been subdued, but PO Martinez could not recall which sergeant this was. He only recalled this car arriving. § 87(2)(b) was transported in the back of PO Martinez's car. He could not recall if they had finished issuing the summons or if he had any further conversation with the people in the car at the scene. He recalled seeing them at the station house later.

It did not appear to PO Martinez that § 87(2)(b) was drinking. He could not recall if he ever asked § 87(2)(b) where they were coming from or going.

PO Martinez never cursed at anyone. He did not say, "I don't have to tell you shit," in response to § 87(2)(b)'s questions regarding her arrest. He did not tell her that he "could do whatever the fuck I want to do" in regards to the flashlight. He never threw a bag of McDonald's onto the ground. He never pulled § 87(2)(b)'s hair or threw her down on the back of the vehicle.

Witness Officer: Sgt. William Brady

Sgt. William Brady was interviewed at the CCRB on February 10, 2003 (Enc. 15a-e). On August 22, 2002, he worked an 11:05 PM to 8:02 AM shift as the patrol supervisor with PO Ballantyne. He was in uniform and assigned to RMP 1336.

At 4:00 AM, Sgt. Brady was present at Flatbush Avenue and Alton Place in Brooklyn with PO Murphy and PO Martinez regarding their arrest of § 87(2)(b). He stated that § 87(2)(b) was already in handcuffs and in the back of the officers' RMP when he arrived. He was told by the officers that § 87(2)(b) had exited the civilians' vehicle after a routine stop due to a broken headlight. The officers told him that she was screaming and flailing her arms and that they had warned her that she could be arrested for disorderly conduct. They told him that they had placed her against the back of the civilian vehicle where she had struggled and PO Murphy had used pepper-spray to gain compliance.

Sgt. Brady stated that § 87(2)(b) only complained of the pepper-spray, mentioning no other injury or specific complaint. He saw no McDonald's food or bag on the ground and witnessed no interaction between PO Martinez and the rest of the civilians in the car.

Police Documents

§ 87(2)(b)'s arrest was sealed. Therefore, the OLBS, UF61, and medical treatment of prisoner report were unavailable from the 63rd Precinct (Enc. 26a). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] (Enc. 20) The command log notes her arrest at 4:00 AM. She was taken to § 87(2)(b) at § 87(2)(b) and returned to the station house at § 87(2)(b) (Enc. 22)

§ 87(2)(a) 160.50

Medical Records

The Ambulance Call Report notes that § 87(2)(b)'s chief complaint is that the left side of her face hurt, and that she "complained of pain to the left side of face after being punched." But in the comments section, the records notes that she had no swelling on the left side of her face and the area was not tender to the touch. (Enc. 16)

§ 87(2)(b) was taken to § 87(2)(b) from the station house and was treated in the emergency room. The "History and Physical Examination" note § 87(2)(b)'s history of depression and state, "Patient reportedly became agitated after a vehicle she was a passenger in was pulled over by NYPD. Patient claimed that she just wanted to go home to her kids but an argument ensued. Patient apparently was sprayed with mace and claims to have banged her head on the (illegible) car." It notes a bump to her forehead consistent with mild blunt trauma to the head. (Enc. 17a-g)

Conclusions and Recommendations

Officer Identification

Several of the witnesses identified both PO Murphy and PO Martinez by name to IAB. The identification was also confirmed by the relevant paperwork and by the officers, themselves. [REDACTED]

§ 87(2)(g)

Established Facts and Issues in Dispute

On August 22, 2002, PO Murphy and PO Martinez pulled over a vehicle driven by § 87(2)(b) [REDACTED], due to a broken headlight. While PO Murphy spoke to § 87(2)(b) and gathered the necessary paperwork from him, PO Martinez stood on the passenger side of the vehicle, which carried five people including the driver, and shone his flashlight into the car. § 87(2)(b) who sat directly behind the front passenger seat, complained about the light in her eyes. § 87(2)(g) [REDACTED]

The officers returned to their car to run a license check. § 87(2)(b), § 87(2)(g) [REDACTED] § 87(2)(b) ended up out of § 87(2)(b)'s vehicle, § 87(2)(g) [REDACTED] She was restrained against the back of the vehicle and pepper-sprayed before being handcuffed. § 87(2)(g) [REDACTED]

Credibility

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation A) Discourtesy: PO Robert Martinez spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation B) Force: PO Robert Martinez used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Martinez pulled her from the vehicle after her friend, § 87(2)(b), attempted to get out of the car. All three civilians interviewed stated that it was § 87(2)(b) who wanted to get out of the car and that PO Martinez had perhaps mistaken § 87(2)(b)'s rude gestures towards her friend as intended for him. Both officers claim that § 87(2)(b) clearly exited the car on her own while they were still near their RMP running the driver's license.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g) She claimed that PO Martinez grabbed her by her hair and took her out of the vehicle without asking or ordering her to exit. § 87(2)(b) however, stated both in her IAB and CCRB interview that PO Martinez ordered § 87(2)(b) out of the car and she complied. § 87(2)(b) told IAB that § 87(2)(b) was ordered out of the vehicle, but in her CCRB statement claimed that PO Martinez had grabbed her out of the car without ordering or asking.

§ 87(2)(b), § 87(2)(g)

Allegation C) Discourtesy: PO Robert Martinez acted rudely toward § 87(2)(b)

§ 87(2)(b) claimed that PO Martinez knocked the bag of McDonald's from her hand, commenting that she would have nothing to bring home to her kids now. § 87(2)(b) stated that the officer "dropped" the food on the ground and stepped on it. § 87(2)(b) stated that the food fell from her hands when the officer grabbed her to slam her on the car, but added that he returned later and kicked the food.

PO Murphy claimed that § 87(2)(b) had thrown her purse at him and recalled that she had food in her hands and that, after the struggle on the car, the food was on the ground, but offered no explanation as to how it got there. PO Martinez similarly recalled that she had the food, recalled it hitting his leg, and recalled in being on the ground, but could not clearly recall how exactly it had left her hands. He did deny throwing it to the ground.

§ 87(2)(b), § 87(2)(g)

Allegation D) Force: PO Robert Martinez hit § 87(2)(b) against a vehicle.

Allegation E) Force: PO James Murphy hit § 87(2)(b) against a vehicle.

§ 87(2)(g) PO Martinez and he both claimed that he had and had not pushed § 87(2)(b) down onto the car, in the end he stated that he had pushed her down onto the car in response to her pushing off of the vehicle and struggling with him. PO Murphy recalled PO Martinez pushing § 87(2)(b) down onto the vehicle once in response to her pushing upwards. Neither officer could recall § 87(2)(b) bumping her head.

§ 87(2)(b) s version has PO Martinez slamming her down into the car when he first grabbed her and then both officers doing so repeatedly as they tried to handcuff her. § 87(2)(b) stated that she saw the officers slam her friend down onto the vehicle three times. § 87(2)(g), she noted that § 87(2)(b) was actively trying to get up and away from the car, "defending herself." § 87(2)(b) claimed that her friend had not moved at all before being accosted by the officer, but that she did actively try and move around or off of the car after being pushed down onto it and that the officers slammed her down in response. § 87(2)(b) stated in both her IAB and CCRB interviews that she wanted an explanation from the officer before she provided them with her arms for handcuffing and did not respond to several orders to give them her arms, § 87(2)(g)

New York Penal Law 35.27 states that a “person may not use physical force to resist an arrest, whether authorized or unauthorized.” Likewise, 35.30 allows an officer to use reasonable to effect an arrest when someone is actively resisting. § 87(2)(g)

§ 87(2)(b) s medical records support an injury to the left side of her face indicative of striking her face on the car. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation F) Abuse of Authority: PO Robert Martinez threatened to arrest § 87(2)(b)

§ 87(2)(b)

Allegation G) Discourtesy: PO Robert Martinez spoke obscenely and rudely to § 87(2)(b)

§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

He then knocked § 87(2)(b) s purse, which was on the trunk of the car, onto the floor, and kicked it along with the McDonald’s food.

§ 87(2)(b), § 87(2)(g)

Allegation H) Force: PO James Murphy used pepper spray against § 87(2)(b)

It has been established that § 87(2)(b) was actively struggling with the officers against the back of the vehicle and refusing to be handcuffed. Two male officers were unable to gain compliance and, as mentioned by PO Martinez, the fact that § 87(2)(b) was a woman made them apprehensive to continue struggling with her. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: